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Neb. Board of Mediation and Investigation.

Partial report

[Lincoln, Neb.]

[1917]

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State of Nebraska
Department of Labor

KEITH NEVILLE, Governor
G. E. NORMAN, Deputy Labor Commissioner

Partial Report
Board of Mediation and Investigation
of the
Labor Troubles in Omaha

June 18 to August 1, 1917

BOARD MEMBERS

ROBERT COWELL, Chairman, Omaha
T. P. REYNOLDS, Omaha.
A. J. SAWYER, Lincoln.
G. E. NORMAN, Secretary, Lincoln.

State Capitol Lincoln, Nebraska

August 1, 1917.

TO HIS EXCELLENCY, KEITH NEVILLE, GOVERNOR OF THE STATE OF NEBRASKA.

On June 12th, agreeable to a communication from your excellency, of which the following is an excerpt,—

> "I now deem it advisable for the Board of Mediation and Investigation to interest themselves in the labor difficulty in Omaha. You will kindly communicate with the other members of the commision and take such steps as are necessary to properly conduct an investigation."

Arrangements were made as soon as convenient, members notified and the board met on June 18, 1917, in the Board of Education Rooms in the City Hall of Omaha. All members were present.

For the employers, there appeared F. A. Brogan, Esq., and for the labor unions, A. H. Bigelow, Esq. The Chairman stated why the meeting was called, by what authority, its duties and its powers; read from the act creating the board, which was signed by Governor Morehead on April 21, 1913. The Chairman then urged a truce upon the basis of conditions as they existed before the trouble started, and read to the parties present an excerpt from Secretary of Labor Wilson's address made in May of this year:

> "I do not believe that any working man has any right to interfere with capital in organizing into corporations. I do not believe that any capitalist has any right to interfere with working men in organizing into unions. If workmen are free, as capital is free to organize, and their standards of living are maintained, then it would seem to be the heights of disloyalty to stop the wheels of industry in this critical period solely for the purpose of forcing a recognition of the union. And that is one of the things that must be impressed upon employer and employee alike. That is the height of disloyalty to force or bring about a stoppage of our industries in order to force the establishment of standards that they have not been able to force during normal conditions."

Counsel for the employers of labor made a statement as to whom he represented and expressed himself as feeling that there should be some definite statement as to what the actual conditions were before the trouble started. Counsel for labor offered to confer, stated he represented what is known unofficially as the Labor Defense League, and stated further that they expected and would desire an investigation of what is known as the Business Men's Association. The Chairman stated he is a member of the Business Men's Association and if either of the parties to the controversy felt there was any impropriety in his sitting on the board, he would resign.

No objection was raised by counsel on either side, it being pointed out that statute contemplated a representative of employers and that in like manner Mr. Reynolds represented labor.

Upon suggestion of Chairman of the board would like to see all construction work in Omaha resumed on some equitable basis, pending the result of this investigation. Mr. Brogan for employers stated that they were ready to meet any employee but would not be driven into recognition of the union. Mr. Bigelow expressed a willingness to meet through committees for considering temporary resumption, with a specific agreement that such a meeting would not be considered a recognition of unions. Mr. Brogan refused, National Commissioner of Conciliation, L. F. Nelson, desired to address the board. Mr. Brogan objected to his doing so at that time. In the hope that a truce might be established, members of the board met during recess with attorneys in a room in the Fontanelle Hotel. Impossible to arrive at any agreement because attorney for employers refused to confer with any committee, but stated as he had done previously, that the employers would be glad to meet any employee individually. Board met again at 2:00 p. m., and Mr. Nelson made his statement at that time. He said he had been in Omaha since May 30th urging conciliation and in his address made a very strong plea for settlement, on the basis of Secretary of Labor Wilson's recommendation as to labor troubles during war, quoted above. Board adjourned until June 19th at 10:00 a. m.

Upon coming to order, Mr. Brogan referred to the restraining order which was to be heard in the District Court on June 27th and urged a stoppage of the hearing until after that date. Mr. Bigelow earnestly argued that the investigation should proceed. Mr. Brogan stated issue was open or closed shop and that as the restraining order—

> "Decreed that the questions of union or non-union shops, whether advocated for or against by any of the defendants herein, be held in abeyance until the close of the present war, in which the United States Government is now engaged."—

hearing should not go on.

He, Brogan, had doubts as to whether they were not actually forbidden from coming before the board by that clause. Mr. Bigelow took a different view and stated labor had absolutely conformed to the spirit of the restraining order for some time, particularly declaring that the unions were not asking for any more of a closed shop than existed before the war. Chairman decided that the board should proceed unless instructed otherwise by the Governor.

Mr. Brogan then asked for time for consultation with his clients and the board adjourned until 1:30 p. m. Upon convening Mr. Brogan stated they would decline to participate in the hearing further, until after the hearing in the District Court. Mr. Gaines, acting with Mr. Brogan, for the employers, then appeared for the first time. At the same time M. D. Owen and B. F. Ninde appeared with Mr. Bigelow, the former two gentlemen representing the Bricklayers International Union. He also urged the board should take a recess until after the hearing referred to. Chairman made a statement that he had a call from the Attorney General who claimed to speak with authority for the Governor and that he too had requested an adjournment. Acting upon the Attorney General's request, the Chairman announced adjournment subject to instructions from the Governor or call of the chair.

Mr. Bigelow raised the question that a vote of the members should be taken on that action. The correctness of this position was recognized by the chairman and the Secretary called the roll. Immediately there was a discussion as to whether the Secretary had a vote. Chairman thought he did not have, but after argument and a statement of Judge Sawyer, a member of the Board, expressing his idea that under the law the Secretary was entitled to a vote, Chairman ruled that the Secretary's vote should be recorded. Adjourned until Wednesday, June 20th, at 2:00 p. m.

Chairman reported conversation with Governor and stated that the Governor had informed him that the Attorney General did not represent his views and that the matter of adjournment or continuation would be left to the Board, whom he felt were better informed as to the situation than he could possibly be.

Mr. Gaines again urged adjournment and he was followed by Judge Duncan Vinsonhaler, who stated that he represented Attorney General Reed, who also asked adjournment until after the hearing on injunction, stating that an investigation by the board would greatly embarrass the Attorney General in his injunction writ then pending. Some suggestion was made by Judge Vinsonhaler that there were hopeful signs that the difficulties between employers and employees were in a fair way to be settled. Upon motion of Mr. Reynolds, the board then decided to adjourn until Friday morning at 10:00 o'clock and not have a hearing on Thursday, hoping that in the meantime an effort would be made by both sides to adjust differences along the line suggested by the injunction, viz., dropping all question of union or non-union shops until the close of the war. Board met at the usual place Friday, June 22nd, at 10:00 a. m. Chairman announced that on the previous evening he had been served with an order restraining the board from holding any meetings until a hearing on an application for a temporary injunction, a petition against the Board having been filed in a quo warranto suit by the Attorney General, and the Chairman then referred to reported criticisms of the board by the Attorney General, wherein he had questioned the loyalty of the members of the board, and the Chairman made an appeal to a large gathering of working men present to refrain from doing anything which might add to the difficulty or tenseness of the situation.

Mr. Bigelow suggested asking court to advance hearing on the restraining order and if possible have the matter passed upon immediately. Judge Sawyer then introduced the following resolution, which was unanimously passed:

"Whereas the right of this board to sit as a Board of Mediation or Investigation has been challenged by the Attorney General on a quo warranto proceeding to test the constitutionality of the Board, therefore, be it resolved, that the court before whom this case is pending be, and is hereby, respectfully requested to set the hearing of the case at as early a date as possible."

Meeting then adjourned subject to call of chairman. You have already been furnished with a report of the proceedings before Judge Charles Leslie on June 26th and 27th, together with his opinion and denial of temporary injunction writ against the board.

As counsel for the restraining order there appeared with the Attorney General, Senator Norris Brown and Judge Vinsonhaler. The Hon. A. F. Mullen appeared for the board, and Mr. Bigelow as representing one member of the board.

All this seems necessary so that your Excellency and the people of the state may understand causes of delay and reasons for the protracted hearing.

From the testimony taken in the hearings when the board resumed its sittings after the refusal of an injunction against them it develops that the first trouble arose with the Electrical Workers. About January 1st they notified contractors that after April 1st they desired a raise in wages to 68¾ cents per hour. At that time wages were 57½ cents. During the three months intervening repeated efforts were made to secure a conference. On March 30th one was obtained, and the workers were offered 62½ cents per hour. The following day this was modified and formal notification given that after April 1st they would pay 60 cents per hour and an intimation was given that there would be no discussion. On Monday, April 2nd, because of a refusal to confer, the Electrical Workers quit work. On Tuesday, April 3rd, Chairman of the Contractor's Association told the men the whole matter had been turned over to the Business Men's Association. A committee from the workers then called on Alvin Johnson, Secretary of the Business Men's Association, who informed the committee that the employers or the Business Men's Association would not meet with representatives of local or international unions.

Several days later, it is stated, that there was trouble on several construction jobs, electrical workers' union officials disclaim any knowledge or responsibility for these conflicts and testimony was given that such conflicts were contrary to advice and admonition.

Because of the reported conflicts and alleged danger and menace to life and property, employers asked for and obtained a temporary injunction against the Electrical Workers. A large number of witnesses who are members of the Electrical Workers Union appeared before the board and testified that their reason for demanding increased wage was because of the increased cost of living. They testified also that in former years employers had conferred with them and that because of their refusal to do so this year and their further refusal to grant them an increased wage rate they quit work. Testimony was also given that witnesses had made clear in the hearing for the injunction against the Electrical Workers that the granting of such a writ would precipitate further trouble as the members of many of the unions would be precluded from accepting employment on any work covered by an injunction writ, which by its terms prevented the maintenance of union principles.

It might be proper here to call your Exctllency's attention to the fact that the judge in his opinion referred to the meager evidence offered in the application for the injunction and that the showing made was sufficient to entitle the plaintiffs to a temporary injunction. While the wages asked for by Electrical Workers seem somewhat high, and evidently their application was so regarded by the employers, testimony was given which demonstrated that on an average they were not employed more than eight months in a year and that it took some four years of close application, at meager pay, to learn the trade and that they had to expend a considerable sum of money for tools.

A large number of the unions in other crafts had also presented claims for increased wages and so forth, and in the majority of instances had asked that their claims should be granted at about the same time as the Electrical Workers, to-wit, April 1st. The hoisting engineers had requested an advance to take effect on May 1st. Employers offered a compromise to take effect May 1st. Employees asked for conference as in past years. This was refused with the statement that the matter was in the hands of the Business Men's Association. It developed that hoisting engineers do not work on an average more than seven months in any one year; that considerable training is necessary, that the employment is risky, that they are required to have a license, and that the men have to pass an examination before admittance to the union. All this for the purpose of safeguarding the lives of the workers and such other workers as may be employed on the same building. Evidence showed that many employers were anxious to confer, but were prevented from doing so by the Business Men's Association, who did not approve of employers meeting with committees. This union is practically organized up to one hundred per cent. Some employers gave the advance asked for. Some of them paid the advance but covered it up. Many of these men have since left the city. This due to the effect that all work stopped because of the closing of material yards on or about May 1st.

It is suggested that the employees and union men generally had a concerted plan to make Omaha a closed shop town, and evidence was given that the employers had stated that they would insist on an open

shop and that conference would be useless as they never would consent to the closed shop. The unions, however, deny having any concerted plan for forcing a closed shop in all the trades, and the evidence shows that demand for any new or additional recognition was made in not more than three or four unions, and other unions asked only the same recognition that they had enjoyed in previous years. All the unions making such new demands have now withdrawn them, and as to the issue of the open or closed, or union and non-union shop, the unions now unite in an offer to waive during war time all demands for any new additional recognition, if their unions will be accorded the same recognition given to them by employers before this season.

There appeared before the board a large number of witnesses who were members of the teamsters' union. This union was organized in 1916. They never had a closed shop. They made demand for a closed shop in the spring of 1917. Wages in this particular craft varied greatly, some were paid a weekly wage ranging from $12.00 per week to $20.00 per week, others a monthly wage ranging from $40.00 to $75.00 per month and still one other group who received $9.00 per week and their board. Practically all of these men have to attend to their teams on Sundays and the majority of them have to live far removed from their place of employment.

There were still others who were paid upon a commission or tonnage basis receiving in some instances half of what they and their team would earn, figured on that basis.

There were other cases where they did not receive quite half, where, for instance, a man and team earned on the tonnage basis $6.50 per day, the man received $3.00 and there was at least one case where the witness testified that he had kept an account of his earnings and the contents of the book in which he kept the record and testimony tends to show that for a considerable period of time his employers kept out of his earnings what would average 48 cents per day and this sum the employers still retain.

When the teamsters made their demands in January, they did so without any knowledge of any demands being made by other unions. In several instances they succeeded in getting an advance in wages. Testimony was given that a man employed by C. W. Hull & Co., was president of the teamsters' union. This man was discharged about May 15th. According to testimony, the foreman informed him that Mr. Hull required his discharge because he had failed to report some broken tile which came in with a shipment and that because of this he, Hull, could not recover from the railroad company. The witness himself testified that Mr. Hull had told him he was discharged because he had been in the habit of laying off too much, but this the witness denied. Other union employees demanded his reinstatement and because this was refused some 25 quit work, claiming that the discharge was because of being president of their union.

It was charged by the Attorney General in his general injunction suit that the employees who quit work attacked men who had been hired by Hull & Co., to act as substitutes, but no evidence as to that has been presented to the board. In the Attorney General's petition it was further stated that it was no longer safe to operate their teams and wagons, and as a result, material yards, on or about May 21st closed down all over the city.

Evidence on the part of the union, however, oppose this claim and assert that the material yards were closed down by order of the Business Men's Association as a step in their fight against union labor.

The closing down of these material shops and yards caused a general cessation of business and threw out of employment a large number of men. It may interest you and the general public generally to know that a marked improvement seemed to be effected through the organization of the teamsters for after their organization there was a general wage increase in their line of work all over the city.

Men in this employment have long hours. Many of them are required to be at the yards at six or six-thirty in the morning, are allowed one hour for dinner and rarely finish before six-thirty at night. They are also required to go to the barns every Sunday, attend to their horses and clean their harness, and failure to do so entails a fine of from seventy-five cents to a day's wages. These long hours seem to be in conflict with state law and should be investigated.

The situation as far as the teamsters is concerned is very unfortunate. Most of the men are poor with large families and a very large number of them are still out of employment. Overtures have been made by some employers, the men have been offered all that they ask, but when they were ready to go to work a demand was made that they should sign an open shop application. This they refused to do, claiming that it was a violation on the part of the employer of the terms of the injunction and also contrary to union principles.

Among the crafts appearing before the board was the mill workers. It appears they had no union prior to 1916. In the spring they made three demands upon their employers for recognition, a nine hour day and a minimum scale of 35 cents per hour. The members of the board were astonished to find that prior to the formation of the union the wages ranged from 20 cents per hour to 30 cents per hour. A very small percentage receiving the latter wage. The employment is said to be hazardous inasmuch as the men work constantly among machinery. The work is also unhealthy and objectionable because the air is usually charged with fine dust which they cannot help but inhale.

Tools cost from two to three hundred dollars, which they are expected to furnish. The nine hour day and some concessions were made as a wage scale, but they were not fully granted. The employees, since this hearing began, have agreed, in concert with other unions, to waive the recognition during war, but the employers absolutely refused to recognize the union. Much testimony was given indicating that the employers were controlled by the business men's association and prevented from making terms with their men by the association.

The carpenters made a contract with their employers on April 5, 1916, for three years, covering wages and other matters. Under the contract they were not to enter into a sympathetic strike.

When the mill workers' demands were not acceded to, the carpenters threatened to strike and later served notice that if injunction against striking electricians was not dissolved, would enforce a rule under which they would not work on any building where there was an injunction in force as the effect of the injunction would prevent enforcement of union principles.

Carpenters claim employers knew that men would be compelled to quit work if such an injunction was procured. They also stated that the refusal of mill owners to meet with their employees made it impossible for them to continue in employment, the mill workers belonging to same national union.

A large number of carpenters continued at work and are, we understand, still working on all jobs they consider fair, but a considerable number have left the city.

Plasterers struck because a conference was refused. Later made a compromise agreement. Worked until about May 18th, when it is claimed employers told them that they had received orders from the business men's association not to pay scale. Later some employers tried to induce plasterers to sign shop agreements. Many of this craft also quit work when the material shops closed down.

Cement finishers had no grievance, but were locked out due to failure to get materials on May 21st.

Painters made certain demands early in the year. Some were said by employers to be very unreasonable, as, for instance, the demand for a five-inch brush. The union men claimed, however, this was a part of their working rules for some years. Painters also insisted that there should be no employment of what is known as a pacemaker. Their claim being that some employers were in the habit of employing a man at big wages to work a short period of time on a rush plan to set a pace which men could not keep up. Practically all of the differences between the painters and employers have been removed and a large number of the men are at work.

The differences between the boiler makers and their employers have been adjusted and the men went back to work on June 25th.

The laborers and hod carriers lost employment through the lockout.

The iron workers have long been thoroughly organized. They entered into an agreement on May 1, 1916, which was virtually an open shop agreement. No member to quit work because of employment of non-union men unless instructed to do so from Indianapolis. Early in the year they made certain demands, among which was that for an increase of wages. This was granted so they did not press their other demands.

A slight controversy arose later and their representatives were then informed that there could be no conference or agreement because of the general lockout the majority of these men also were thrown out of employment.

Tile workers lost employment due to lockout, but resumed work, but have declined to work on jobs covered by injunction.

The bricklayers had no controversy. This craft is thoroughly organized. Many of the men were thrown out of employment because of the closing of the material shops. This craft has had no trouble prior to May 21st since 1915. They cannot strike without consent of their international union, but a number of witnesses testified that they expected to be called out if the temporary injunction is made permanent.

Altogether some 14 crafts appeared before us, we examined all told 91 witnesses. The very nature of the investigation or probe made the record of testimony exceedingly voluminous. We had expected that the employers would come before us willingly and were and are very much disappointed that they did not do so.

We brought in a number of witnesses through subpoena, but when asked certain questions they refused to answer, acting upon the advice of their attorneys, claiming immunity because the answer might incriminate in view of the injunction proceedings charging conspiracy in restraint of trade.

It was argued that we had power to commit for contempt. For many reasons we were anxious to avoid doing this and so when we came to the end of the testimony of the employees the chairman by resolution was requested to get into communication with the business men's association in the hope that through committee or conference some basis might be found for a settlement of the difficulties.

In accordance with this resolution the chairman addressed the following communication to the Association:

July 19, 1917.

Mr. Alvin Johnson,
Sec'y Business Men's Ass'n.,
Omaha, Nebr.

My dear Mr. Johnson:

By unanimous resolution of the members of the Board of Mediation and Investigation I have been requested to communicate with your Association thru you, in the hope that we can find some avenue thru which we can discuss the labor situation as it exists today—

It has been my earnest desire from the first, to get some definite expression from both parties to the controversy upon which might be found a basis for a settlement of the difficulties between employers and employees.

I have had every reason to believe that the Business Mens Assn. would welcome the fullest investigation and would be glad to aid the Board in getting at all the facts—and this assistance would, I take it, have been given had it not been that your Association (acting upon advice of its Attorneys) felt it was precluded from rendering, because of the temporary injunction procured by the Attorney General of the State.

It is quite possible that Mr. Reed may have felt that a menace to the peace of the community was imminent and that grave danger from lawlessness threatened our city, and it is quite probable that if the employers had come before us as freely as the employees, some facts may have been brought to our notice, which would have convinced our board, that there was abundant justification for his action.

Be that as it may, his action made our investigation a one-sided affair, no one has questioned, since the decision in the District Court our authority to summon witnesses and compel attendance. As you are aware, we did succeed in getting witnesses before us, but we found ourselves up against a stone wall, as it were, when witnesses refused to answer questions upon advice of counsel. It has been contended by counsel on the one side that we had power to punish for contempt, a witness who refused to answer, and argued, just as vigorously, by counsel on the other side that we have no such power. Whether such power inheres in our Board or not, we all recognize the right and justice in protecting a witness from giving testimony which might incriminate himself. Furthermore as a Board and as individuals we are loath to take any steps which might tend to humiliate a witness acting in good faith and following the advice of counsel. Such drastic action, some of us felt might aggravate the situation further and without doubt cause further delay.

Proceeding then as best we could, we have arrived at the end of our examination of employees. While awaiting a transcript of this testimony, preliminary to preparing a report to the Governor of the proceedings thus far, it was felt that this might be an opportune time to offer our services as Mediators.

Some employers have found a ground upon which to meet their men and many men have returned to work. Other employers have expressed a desire to me personally to have an end of the trouble, but apparently felt they would like the sanction and good will of their fellow or associate employers.

A large number of the men are very anxious to go to work (many of them need the wages for the support of their families) and all the men would gladly return if they could without sacrificing such rights or benefits as they feel they enjoy thru their union.

From careful investigation and study I am convinced that if the injunction was quashed or removed a large number of men would be ready to return immediately. Strangely enough these are men who have no special grievance themselves—but who are absolutely precluded by a rule of their international association from accepting employment on any building covered by injunction.

Whatever reason there may have been for an injunction, I am satisfied none exists today and therefore I feel that if that was removed, a large number of men would accept employment at once. Further more I feel warranted in stating that many who have left the city would return.

The question of wages and hours is one that I am certain can be settled easily. Many employers have conceded this, and some employers have made overtures to their men and the men responded readily. Unfortunately in some cases they were then asked to sign a contract doing away with rights which they seemed to have prior to the trouble, notably, recognition of their union and the principle of collective bargaining.

I have talked to leaders and we have questioned a large number of the employees and they all seem ready to go back upon the conditions, regarding these questions, as they existed prior to the starting of the trouble. Whatever the attitude of the men may have been, and however exacting or insistent their demands may have been before war was declared—for patriotic or other reasons they are unanimous in declaring that all they want now are such rights as they enjoyed before, no more—no less.

Now this is my understanding of the attitude of the employes and if I am correct, might it not be possible for the employers to grant them that much, and resopnd in a patriotic and wholehearted way to the appeal of the Secretary of Labor, and in consonance with suggestions and wishes expressed by the President of the United tSates.

May it not be possible to have a committee of employers meet with us or could the employers agree upon some neutral members of our association to represent them and act for them? This much I am asking as chairman of the Board—I urge it also as a member of the Business Mens Association, and still more as one who is interested as a citizen and as a business man whose own business is being injured and jeopardized by and thru what seems now to me a somewhat needless controversy. I am assured on all sides that there is no surplus labor. I am convinced also that if the temporary injunction is made permanent, the trouble will become still more aggravated, and it is because of this belief and owing to this knowledge that I urge the Business Mens Assn. to sacrifice if needs be a little pride of opinion, if such exists, and any stubborness should there be such, so that we may be able, instead of making

a partial report, to tell the Governor all the difficulties are ended—the wheels are going 'round again, with business as usual.

I have neither submitted this to the Board, to employes, nor their attorneys. It is solely and wholly because of the resolution before referred to, and as a citizen and fellow business man that I make this appeal.

For more than thirty years I have been an employer of labor. I have never met with any difficulty in my own business which we could not adjust, and unless employers have some knowledge which has not been communicated to our Board, I cannot see in the situation as it exists now, any reason for believing that there are insuperable difficulties which cannot be removed thru discussion, and surmounted, if the proper spirit is shown by both sides.

May I not ask and hope for a reply.

Very respectfully,

(Signed) ROBERT COWELL,

Chairman.

In response to this letter, the chairman was invited to a meeting which was held in the Commercial Club rooms on Friday, July 20th. There were some forty or fifty employers and business men present, together with their attorney, Mr. Gaines, who presided over the meeting. Many of the employers expressed themselves, but smarting under what they seemed to feel was injustice, alleged unreasonable demands and what they claimed were lawless acts on the part of some employees, they did not seem to be in a conciliatory attitude. They refused absolutely to meet with the committee representing unions, stated that employers would meet the men singly, that they could not be expected to restore conditions to what President Wilson would style the status quo ante; that they had employed many men to take the places of those who had quit work, and they would not think of discharging those who had rendered satisfactory service. In other words, they refused to recede from their demand for an open shop, and were unwilling to treat on the basis of the same degree of recognition as obtained before the war in the various crafts. This, and the existence of injunctions which seem to deny to the unions certain rights which they claim are lawful and are necessary to the maintenance of union principles, are the two obstacles to a practical and early settlement of all differences. It would seem that your Excellency should consider what might be done with regard to the first, and doubtless the courts will adjust the other.

During the progress of the hearing attorneys for employees succeeded in transferring the injunction case for hearing in the Federal court. It was felt that the matter could be handled in a more satisfactory way in the Federal court, inasmuch as it would define clearly just what acts could be enjoined and what acts would be allowed and attorneys for the unions claimed that the unions or the employees had committed no acts which would be regarded as lawless under the Federal law.

Judge Woodrough decided that the matter was purely local, and that the District court had proper jurisdiction and remanded it back for hearing.

Reviewing all the testimony and after full consideration of all the conditions as they were presented to our board, we cannot help but feel that there is nothing in the situation at this time which might not be overcome if the parties to the controversy were willing to meet and confer in the proper spirit.

While it may be true that employees have done those things which they ought not to have done, many have made unreasonable demands and presented an unfair attitude, and it may also be true that employers have done likewise, we cannot help but feel that the dead past should be buried and that men should discuss the situation as it exists today. Proper perhaps to state that labor demands were made before the address of Secretary Wilson referred to in this report, and practically all before war was declared.

Labor states positively that since the declaration of war, it neither asks for nor expects any greater privileges or rights than it enjoyed prior to the time when the trouble started. It is evident to the board, from the testimony which came before us, that if the injunction asked for is made permanent a large number of men will be compelled to quit their employment because of a rule of the international union, which prevents their taking employment on any job covered by injunction of the nature now existing.

The testimony taken before the board covers some 1,500 pages. The chairman desires to keep this transcript in his possession until the controversy is settled, for the purpose of consulting it should any question arise where it might be necessary to do so, and so that the public or any person interested might have ready access to the record.

This report is made supplementary to the verbal report made to your Excellency on Monday, July 23rd. On that date our board met at the office of the Secretary of Labor in the Capitol Building, and after a short meeting took a recess until Monday, July 30th, at 10:00 a. m. It was felt by that time the injunction case would be disposed of and we would then know whether it would be necessary for us to proceed further, and just how to proceed.

It will be remembered before our board met, the matters in controversy between employers and employees were submitted to the investigating committee of the Nebraska State Council of Defense. Statements were made for the employees by what was called the Defense

Committee of the locked out building trades workers, by the chairman and secretary and in this statement it was claimed that employers are organized in Commercial Club, Builders Exchange, Electrical Contractors Association, Master Painters Association, etc., and that these bodies have further combined in and delegated to the Business Mens Association the authority and power to handle all negotiations with their employees. It was claimed that the latter organization exists for only two purposes, namely: to prevent organization among the wage earners and to drive the small contractor out of business, and it was further claimed that this association is responsible for the closing of the material shops on May 21st.

Statements were made by the Business Men's Association through its secretary in which it was claimed that the association was organized fourteen years ago for the following purposes: "The mutual benefit, association and intercourse of the business men of Omaha and vicinity and the securing of co-operation and concert of action in the development and upbuilding of the business interests of this community." "To protect its members in their constitutional rights."

"To discourage boycots, sympathetic strikes, restriction of output and unreasonable demands that savor of persecution, as a menace to industrial progress and detrimental to the interests of employers and employees alike."

"To encourage industry and thrift by enlarging the opportunities of young men to learn trades and become skilled mechanics and more useful and prosperous citizens."

The association stated further that the demands made by the different unions early in 1917 were for the purpose of establishing the closed shop.

With such a marked difference as to the claims and objects of the parties to the controversy, as set forth, we must reiterate that it is exceedingly regretable that the employers nor the members of the business men's association appeared before our board,—a board created by the legislature of the state for the express purpose of investigating and mediating in just such a controversy—and we feel impelled to state that it is our belief that if they had given us their aid and assistance, the public would have had a better opportunity to judge as to the merits of the various claims made, and we would have been aided materially in forming correct conclusions, that the situation could have been presented more clearly, our duties made much easier and our investigation infinitely more satisfactory, if it would not, indeed, have opened the way for the settlement of all the difficulties.

Much testimony was given by employees before our board which tended to show that many employers would have settled with their employees had it not been for pressure brought by the business men's association, and as no testimony was given by the other side to controvert them, we have been compelled to accept these statements as being true.

Called together by your Excellency to investigate fully all the causes leading up to the labor troubles in Omaha, we are conscious that this is not a complete and satisfactory report. We are strongly of the opinion that the business men's association and many of the employers will be advised by Council not to aid us in our efforts nor answer fully our questions and this being so we see little to be gained by prolonging our investigation.

We believe that some steps should be taken by your Excellency or the State Council of Defense to compel both parties to the controversy to live up to the spirit as well as the letter of the recommendations and requests made by the Secretary of Labor and so strongly approved by the President. From all the statements made to us on behalf of the employees and the testimony of a large number of them, we are convinced that labor stands ready to observe and obey the suggestions in their entirety. If there is any means whereby a similar agreement can be gotten from the employers,—and both parties will live up to their promises—much may be done to relieve the present deplorable situation.

After a careful consideration of all the testimony, we are convinced that under all the circumstances, laborers demands as to hours of labor, wages and improved working conditions are not unreasonable or excessive.

Very respectfully submitted,
THE BOARD OF MEDIATION AND INVESTIGATION,
(Signed) ROBERT COWELL,
Chairman.

T. P. REYNOLDS,
A. J. SAWYER,
GEO. E. NORMAN,
Secretary.

IN RE REPORT OF MEDIATION BOARD.

Objections on Behalf of the Labor Unions to the Report of the Board of Mediation and Investigation, Dated August 2, 1917.

In considering the scope of the partial report of the Board of Mediation and Investigation, certain points naturally suggest themselves.

Any report emanating from the Board should be predicated upon testimony which comes before it officially.

Mere statements of counsel, however formal, either as to existing facts or as to facts which it may be the intention to prove, should not, in the absence of testimony in the premises, be regarded as forming any basis for a finding or report of the Board.

The approved procedure would seem to be that the report should recite that certain persons or a group adduced testimony establishing or tending to establish certain facts; that the adverse persons or a group, though afforded ample, even urgent opportunity to show their side of the controversy, failed or refused to accept such opportunity and to introduce any testimony whatever in support of their contention.

The report, therefore, logically, from all of the testimony before it, should be a finding in conformity with the testimony in the record and no other.

The statements of respective counsel as to utterances of the respective sides before the State Council for Defense is not testimony in any sense and cannot legally be considered by the Board in arriving at its findings.

The same is true as to other extraneous matter. For example: Allegations made by either party in petitions or other documents in other proceedings, either in court or otherwise, or the contentions of either party urged before courts or any other tribunals, not introduced in evidentiary form in the hearings before the Board of Mediation, cannot form any legitimate basis for the report of this Board.

Applying the above facts to the situation confronting the Board of Mediation at this time, it would appear that this situation is analogous to one which would arise before a court of justice where one party had fully adduced evidence in support of its contention and the adverse party, though freely tendered its day in court, had utterly failed to adduce any testimony in support of its contentions. In such case, it is a matter of common knowledge that the finding of the court must be in favor of the party establishing his case, providing it is found that the testimony is sufficient to that end.

And the analogy may be pushed further under the record in hearing, namely: Even though both parties to the controversy made a statement of what it is expected by it to prove at the hearing, that action can lend no strength to the party who fails to establish its contention in conformity with such statement by adducing material and relevant testimony. And the statement of the party who fails to support it by testimony, cannot be received either as evidence nor can it be considered as a factor tending to support the contention of said party.

(Signed) BIGELOW & SCHREMPP,
NINDE, POTTER & OWEN,
Attorneys for Labor Unions.

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TITLE